

N.D.A.G. Letter to Larson (July 7, 1989)

July 7, 1989

Honorable Diane Larson
State Representative
District 52
413 Cambridge
Bismarck, ND 58504

Dear Representative Larson:

Thank you for your May 8, 1989, letter asking whether the Governor or any other elected or appointed official may campaign for or against an issue at state expense.

The powers and duties of public officers are prescribed by the state constitution and by state statutes. Generally speaking, public officials have only such authority as the constitution and statutes expressly give them, together with those powers and duties that are necessarily implied from those express grants of authority. American Federation of State, County and Mun. Employees, Council No. 95 v. Olson, 338 N.W.2d 97 (N.D. 1983). In North Dakota the rule of law is that where the performance of the legal duty involves the exercise of judgment and discretion, the courts will not interfere with such an exercise nor will they direct the manner in which discretion is to be exercised. First American Bank v. Ellwein, 198 N.W.2d 107 (N.D. 1972).

Your letter questions the ability of all public officers to speak out on measures pending before the public. It is not possible to attempt to identify each and every public official in North Dakota, to examine the authority provided to each official, and to reach a conclusion as to each officials' implied powers to carry out his or her express duties and responsibilities. Because your letter specifically mentions the Governor, I will restrict my response to that officer.

The executive power of the state of North Dakota is vested in the Governor. N.D. Const. art. V, § 1. The constitution also provides that the Governor shall see that the laws are faithfully executed. N.D. Const. art. V, § 5. N.D.C.C. § 54-07-01 describes the Governor's other powers and duties.

Concededly, there is no express grant of authority to the Governor to express his views on measures pending before the public. However, as the state's chief executive officer, the Governor does possess implied powers and duties to carry out his expressly provided duties. I cannot conclude as a matter of law that the state's chief executive officer is unable to express his view on matters involving the state, its fiscal affairs, or the manner in which its business is conducted. Whether the Governor chooses to express his view on these subjects is a matter that lies within the sole and exclusive discretion of the Governor and will not be reviewed by the courts or any other executive branch officer, including the

Attorney General.

Your letter mentions the statements of public officials at state expense concerning measures pending before the public. There is one statute that arguably applies in such a situation. N.D.C.C. § 16.1-10-02 prohibits the use of state services or property for political purposes. However, "political purpose" is statutorily defined to refer only to activities by or on behalf of candidates for office, political parties, political committees, or organizations. N.D.C.C. § 16.1-10-02(2)(a). "Political purpose" does not refer to initiative or referendum measures nor does it include activities "undertaken in the performance of a duty of state office." N.D.C.C. § 16.1-10-02(2)(a).

In summary, so long as the provisions of N.D.C.C. § 16.1-10-02 are not being violated, I cannot conclude that the Governor as the state's chief executive officer is unable to express his views on measures pending before the public involving the state's fiscal affairs or operation of state government in general.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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